United Nations ST/IC/2010/26

Secretariat

7 September 2010

Information circular*

To: Members of the staff

From: The Under-Secretary-General for Management

Subject: **Practice of the Secretary-General in disciplinary matters and possible criminal behaviour, 1 July 2009 to 30 June 2010**

1. The purpose of the present circular[1] is to continue to inform staff members of the practice of the Secretary-General in exercising his authority in disciplinary matters under Article X of the United Nations Staff Regulations, and to implement paragraph 17 of resolution 59/287, in which the General Assembly requested the Secretary-General to ensure that all staff of the Organization are informed of the most common examples of misconduct and/or criminal behaviour and their disciplinary consequences, including any legal action, with due regard to the protection of the privacy of the staff member(s) concerned. This circular covers the period from 1 July 2009 to 30 June 2010.

2. Effective 1 July 2009, a new system of administration of justice was established pursuant to General Assembly resolutions 61/261, 62/228 and 63/253. The major change in the new system relating to the handling of disciplinary matters was the abolition of the Joint Disciplinary Committees, effective 1 July 2009. The Joint Disciplinary Committees functioned as fact-finding bodies, and made recommendations to the Secretary-General as to the disposition of disciplinary cases, following which a decision was taken on cases. As a result of the abolition of the Joint Disciplinary Committees, decisions on the imposition of disciplinary measures are now taken without the advice of a joint body.

3. In addition, also effective 1 July 2009, amended Staff Regulations and provisional Staff Rules were promulgated (see ST/SGB/2009/7). The major change in the provisional staff rules relating to disciplinary matters was the introduction of administrative leave pending an investigation and during the disciplinary process, as set out in provisional staff rule 10.4, which replaced suspension pending investigation under former staff rule 110.2. The change was made to clarify that

* The present circular is in effect until further notice.

[1] Previous circulars covering the period from January 2000 to June 2009 were issued as ST/IC/2002/25, ST/IC/2004/28, ST/IC/2005/51, ST/IC/2006/48, ST/IC/2007/47, ST/IC/2008/41 and ST/IC/2009/30.

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removal from duty pending investigation and/or disciplinary proceedings was not a disciplinary sanction.

I. Overview of administrative machinery in disciplinary matters in the new justice system

A. Legislative framework governing the conduct of staff members[2]

4. Article 101, paragraph 3, of the Charter of the United Nations states that the "paramount consideration in the employment of the staff and in the determination of the conditions of service shall be the necessity of securing the highest standards of efficiency, competence and integrity".

5. Article I of the Staff Regulations and Chapter I of the provisional Staff Rules, both entitled "Duties, obligations and privileges", set out the basic values expected of international civil servants because of their status, as well as particular manifestations of such basic values. Particular reference is made to staff regulation 1.2 and provisional staff rule 1.2 for specific instances of expected or prohibited conduct.

B. Misconduct

6. Article X of the Staff Regulations provides in regulation 10.1 that "the Secretary-General may impose disciplinary measures on staff members who engage in misconduct". Provisional staff rule 10.1 (a) provides that the "failure by a staff member to comply with his or her obligations under the Charter of the United Nations, the Staff Regulations and Staff Rules or other relevant administrative issuances, or to observe the standards of conduct expected of an international civil servant, may amount to misconduct and may lead to the institution of a disciplinary process and the imposition of disciplinary measures for misconduct". Additionally, provisional staff rule 10.1 (c) provides that "the decision to launch an investigation into allegations of misconduct, to institute a disciplinary process and to impose a disciplinary measure shall be within the discretionary authority of the Secretary-General or officials with delegated authority". Within these parameters, the Secretary-General has broad discretion in determining what constitutes misconduct and in imposing disciplinary measures. Administrative instruction ST/AI/371/Amend.1 on revised disciplinary measures and procedures[3] provides further examples of conduct for which disciplinary measures may be imposed.

C. Due process

7. Where the head of office or responsible officer believes, following an investigation, that misconduct may have occurred, he or she refers the matter to the

[2] Provisions relating to the status, rights and obligations of staff members, and to disciplinary matters, can be found in the electronic Human Resources Handbook under "Status, basic rights and duties" and "Disciplinary".

[3] Also relevant is Secretary-General's Bulletin ST/SGB/2008/5 on the prohibition of discrimination, harassment, including sexual harassment and abuse of authority.

Assistant Secretary-General for Human Resources Management for a decision on whether to pursue the matter as a disciplinary case.[4] Depending on the subject matter and complexity of the investigations, they can be undertaken by the head of office or his or her designees, or by the Office of Internal Oversight Services, at its own initiative or at the request of a head of office.

8. If the Assistant Secretary-General for Human Resources Management decides to pursue the matter as a disciplinary case, the staff member is notified in writing of the charges of misconduct, informed of his or her opportunity to comment on the charges and of his or her right to seek the assistance of counsel in his or her defence through the Office of Staff Legal Assistance or from outside counsel at his or her own expense. The staff member is given a reasonable opportunity to respond to the charges of misconduct. In the light of the comments provided by the staff member, the Assistant Secretary-General for Human Resources Management decides whether to close the case, with or without administrative action, or to recommend the imposition of one or more disciplinary measures. In the case of the latter, the Under-Secretary-General for Management decides, on behalf of the Secretary-General, whether to impose one or more of the disciplinary measures provided for in provisional staff rule 10.2 (a).

9. At any time pending an investigation until the completion of the disciplinary process, the Assistant Secretary-General for Human Resources Management may decide to place a staff member on administrative leave where: there is prima facie evidence that the conduct of the staff member poses a danger to other United Nations personnel or to the Organization; the staff member is unable to continue to perform his or her functions effectively in view of an ongoing investigation and the nature of the functions; there is prima facie evidence that the continued service by the staff member would create an unacceptable risk that he or she could interfere with the investigation; or where the Department of Safety and Security determines that the continued presence of the staff member on United Nations premises could constitute a security risk to the Organization. Decisions of placement on administrative leave without pay are taken by the Under-Secretary-General of the Department of Management.

10. In accordance with provisional staff rule 10.3 (c), a staff member against whom a disciplinary measure has been imposed may submit an application before the Dispute Tribunal challenging the imposition of the measure(s) in accordance with chapter XI of the provisional Staff Rules.[5]

D. Disciplinary measures

11. Provisional staff rule 10.2 (a) provides that disciplinary measures can take one or more of the following forms (i.e., more than one measure can be imposed in each case):

(a) Written censure;

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[4] The head of administration in a mission will refer the case to the Department of Field Support at Headquarters, which will refer the matter to the Office of Human Resources Management if it concurs with the mission's assessment.

[5] Judgements of the Dispute Tribunal relating to disciplinary cases can be found on the website of the Office of the Administration of Justice (www.un.org/en/oaj).

(b) Loss of one or more steps in grade;

(c) Deferment, for a specified period, of eligibility for salary increment;

(d) Suspension without pay for a specified period;

(e) Fine;

(f) Deferment, for a specified period, of eligibility for consideration for promotion;

(g) Demotion, with deferment, for a specified period, of eligibility for consideration for promotion;

(h) Separation from service, with notice or compensation in lieu of notice, and with or without termination indemnity;

(i) Dismissal.

12. In determining the appropriate measure, each case is decided on its own merits, taking into account the particulars of the case, including aggravating and mitigating circumstances. In accordance with provisional rule 10.3 (b), disciplinary measures imposed are proportionate to the nature and gravity of the misconduct involved.

E. Other measures

13. Written or oral reprimands, recovery of monies owed to the Organization, and administrative leave with or without pay are not considered disciplinary measures. Reprimands, like warnings or letters of caution, are administrative/managerial measures that are important for upholding standards of proper conduct and promoting accountability. Additionally, where inappropriate behaviour affects performance, the issue is addressed in the context of performance management. This may include training, counselling, withholding of salary increments, non-renewal of contract or termination of appointment.

II. Summary of cases for which the Secretary-General imposed a disciplinary measure during the period from 1 July 2009 to 30 June 2010

14. For each case that led to the imposition of one or more disciplinary measures, a summary is provided below indicating the nature of the misconduct and the disciplinary measure(s) imposed by the Secretary-General. The function of or other particulars relating to the staff member are provided only when they played a role as aggravating or mitigating circumstances in determining the measures to be taken. Conduct issues that were dealt with by means other than disciplinary measures are not listed.

15. Not every case brought to the attention of the Secretary-General results in disciplinary or other measures being taken. When a review by the Office of Human Resources Management reveals that there is not sufficient evidence to pursue a matter as a disciplinary case or when a staff member provides a satisfactory explanation in response to charges of misconduct, the case is closed and the staff

member is considered cleared of the charges. Cases may also be closed when a staff member retires or otherwise separates from the Organization before disciplinary proceedings are concluded, as the Secretary-General does not have the authority to impose disciplinary measures on former staff members. In such cases, a record is made and placed in the former staff member's official status file so that the matter can be further considered if and when the staff member rejoins the Organization.

16. As a consequence of the abolition of the Joint Disciplinary Committees, more time is spent scrutinizing every aspect of referrals for disciplinary action, including obtaining clarifications and/or additional evidence from the staff member concerned and/or the investigating entity in order to ensure, to the greatest extent possible, that recommendations are made and decisions are taken on the basis of a complete record.

A. Abuse of authority/harassment

17. A staff member sexually harassed another staff member, abused his authority with respect to her, and sent her offensive and threatening e-mails and text messages, including through the Organization's information and communications technology (ICT) resources. The staff member also distributed offensive material to other staff, using the Organization's ICT resources.

Disposition: dismissal.

Appeal: none filed as of the date this circular was submitted for processing.

18. A staff member abused his authority and sexually harassed an intern who served under his authority.

Disposition: dismissal.

Appeal: filed with the Dispute Tribunal, where the case remains under consideration.

B. Assault

19. In the context of an e-PAS discussion, a staff member reacted with aggression to her supervisor's comments and grabbed and pushed her against a wall.

Disposition: censure, loss of step in grade and deferment for one year of eligibility for within-grade increment.

Appeal: none.

20. In the course of his official duties as a driver, a staff member reacted aggressively to the comments of another staff member about his performance and driving abilities, and punched the staff member in the jaw.

Disposition: censure, loss of step in grade and deferment of one year in eligibility for within-grade increment.

Appeal: none.

21. A staff member physically assaulted a security officer and used profane language in respect of the United Nations and its staff members.

Disposition: censure (and continued participation in substance abuse counselling).

Appeal: none.

22. A staff member assaulted two national police officers and resisted arrest after being involved in a motor vehicle accident.

Disposition: demotion with deferment, for a period of one year, of eligibility for consideration for promotion.

Appeal: none.

C. Computer-related misconduct

23. A staff member received, stored and distributed e-mails containing pornographic material using the Organization's ICT resources.

Disposition: censure and demotion of one grade with deferment, for three years, of eligibility for consideration for promotion.

Appeal: filed with the Dispute Tribunal, where the case remains under consideration.

24. A staff member improperly stored and transmitted pornographic material on the Organization's ICT resources.

Disposition: loss of two steps within-grade, and a two-year deferral of within-grade salary increment.

Appeal: filed with the Dispute Tribunal, where the case remains under consideration.

D. Financial disclosure

25. Five staff members failed to comply with their financial disclosure obligations for the 2006 reporting period.

Disposition: censure plus a fine of two months' net base salary.

Appeal: none.

E. Fraud/misrepresentation

26. A staff member submitted inaccurate claims for rental subsidy allowance to the Organization, supported by forged and falsified documentation; certified the accuracy of such claims in the knowledge that they were not accurate; and knowingly received from the Organization rental subsidy allowances to which he was not entitled.

Disposition: dismissal.

Appeal: none.

27. A staff member submitted fraudulent United Nations purchase order forms that were used to acquire computer equipment and other goods.

Disposition: dismissal.

Appeal: none.

28. A staff member made material misrepresentations on her personal history performance form in relation to her educational qualifications.

Disposition: separation from service with compensation in lieu of notice and with termination indemnity.

Appeal: none filed as of the date of submission of the present circular.

29. A staff member knowingly submitted false information and supporting documentation in support of a claim for medical expenses.

Disposition: dismissal.

Appeal: none filed as of the date of submission of the present circular.

30. A staff member, after forging the signature of an authorized signatory, attempted to cash a cheque to be drawn from the account of a United Nations-related organization in the amount of $12,500.

Disposition: separation from service with compensation in lieu of notice but without termination indemnity.

Appeal: none.

31. A staff member used his office and knowledge gained from his official functions for the private gain of friends and acquaintances by preparing and issuing fraudulent correspondence on the Organization's letterhead to facilitate the entry of these persons into the country of his duty station.

Disposition: dismissal.

Appeal: none filed as of the date of submission of the present circular.

F. Procurement irregularities

32. A staff member, performing procurement functions, entered into private contracts with, solicited benefits from, and failed to disclose a private commercial relationship with companies that did or sought to do business with the Organization. The staff member also engaged in unauthorized outside activities, used the ICT resources of the Organization for private gain and for the private gain of third parties, and knowingly provided false and incomplete financial disclosure information for three consecutive years.

Disposition: dismissal.

Appeal: filed with the Dispute Tribunal, where the case remains under consideration.

33. A staff member received benefits from a United Nations contractor and, nevertheless, assessed the contractor's performance under its contract with the United Nations. In addition, the staff member violated established mission

procedures for the movement of personnel in the mission area and did not ensure that his attendance records correctly reflected his absences.

Disposition: dismissal.

Appeal: the staff member challenged the decision before the Dispute Tribunal. The Dispute Tribunal found in favour of the staff member.

G. Sexual exploitation and sexual abuse

34. A staff member, exercising responsibilities that included the authority to hire casual daily workers, engaged in sexual relationships with local women, pursuant to which sexual favours were exchanged for money and/or employment for them, their relatives and/or friends.

Disposition: dismissal.

Appeal: none.

H. Theft/misappropriation

35. A staff member stole two flat screen computer monitors from the Organization.

Disposition: dismissal.

Appeal: none.

36. A staff member knowingly misappropriated diesel fuel belonging to the Organization.

Disposition: separation from service with compensation in lieu of notice, but without termination indemnity.

Appeal: none.

37. Two staff members stole 3 Hesco bastions and 10 rolls of barbed wire belonging to the United Nations.

Disposition: dismissal.

Appeal: none filed as of the date of submission of the present circular.

I. Other

38. A staff member violated the local laws in relation to the possession and attempted smuggling of child pornography.

Disposition: dismissal.

Appeal: none.

39. A staff member travelled within the mission area without a valid movement of personnel form, was absent from work without authorization, and drove a United Nations vehicle during curfew hours, and further allowed a wrongful payment to be made to a temporary employment firm.

Disposition: censure and deferment of eligibility for salary increment for a period of two years.

Appeal: none.

40. A staff member made a bad faith complaint against two military officers, following a recommendation for the non-renewal of his appointment.

Disposition: censure.

Appeal: none.

III. Criminal behaviour

41. The General Assembly, in its resolution 59/287, requests the Secretary-General to take action expeditiously in cases of "proven ... criminal behaviour" and inform Member States on the actions taken. Five cases involving United Nations officials were referred to Member States during the reporting period. As far as the Secretary-General is aware, action has been taken in relation to one of these cases and a criminal investigation is ongoing in relation to a case that was referred prior to 1 July 2009.